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LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

COSTA RICA

Communicated by the Government of Costa Rica

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

LAW No. 7233 GOVERNING NARCOTIC DRUGS, PSYCHOTROPIC SUBSTANCES, DRUGS OF UNAUTHORIZED USE AND RELATED ACTIVITIES

Article 1. Amendment of Law No. 7093 of 22 April 1988, 1/ published in Section No. 16 of "La Gaceta" No. 83 of 2 May 1988, so as to read as follows:

"CHAPTER I

General provisions

Article 1. The present law regulates the prevention, use, possession, traffic in and marketing of narcotic drugs, psychotropic substances, inhalants and other drugs or medicaments capable of causing physical or psychological dependence, included in the United Nations Single Convention on Narcotic Drugs of 30 March 1961, approved by Costa Rica in Law No. 4544 of 18 March 1970, as amended by the Protocol amending the Single Convention, Law No. 5168 of 8 January 1973, as well as the Convention on Psychotropic Substances of 21 February 1971, approved by Costa Rica on 10 June 1972, Law No. 4990 and any other legal instrument which may be approved on this matter and those included in the schedules which the Ministry of Health shall establish, maintain and publish annually in the official Gazette.

It also regulates the monitoring, inspection and control of activities related to these drugs and medicaments and of the products, materials and chemical substances involved in their preparation or production, all the foregoing without prejudice to the relevant provisions of the General Law governing Health, Law No. 5395 of 30 October 1973.

It is the function of the State and a matter of special public interest for the protection of health to adopt the measures necessary to prevent, monitor, investigate, avoid or suppress any illicit activities in connection with the matters to which the present law relates.

1/ Note by the Secretariat: E/NL.1989/22.

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Article 2. For the purposes of the present law, the following definitions shall apply:

Drug: any substance or pharmacological agent which, when introduced into the organism of a living person, changes the physiological functions of that person.

Narcotic: any drug which acts on the central nervous system and causes stupor. Deemed to be narcotic are drugs included in the Single Convention on Narcotic Drugs, 1961, done at the United Nations on 30 March 1961; in the Convention as amended by the 1972 Protocol Amending the Convention and all those subject to international control in the future as well as those declared as such by decree of the Ministry of Health.

Psychotropic or psychopharmacological: any substance or synthetic or natural material which acts on the central nervous system, included in the Vienna Convention on Psychotropic Substances, of 21 February 1971, or other convention which may replace or amend it, as well as substances declared as such by decree of the Ministry of Health.

Inhalant: any substance which has the property of transformation into vapour or gas, whereby it can be inhaled and come into contact with the lungs, thereby passing into the bloodstream and thence to other organs and the nervous system giving rise to intoxication which may cause irreversible damage.

Precursor: any substance or mixture of substances from which drugs, narcotics or psychotropic medicaments are produced, synthesized or obtained.

Drug dependent: anyone presenting a psychological or, sometimes, physical state caused by the interaction of a living organism and a medicament.

Drug dependence is characterized by changes in behaviour and by other reactions which always include an irresistible impulse to consume a medicament on a continuous or periodic basis, in order to experience its psychological effects and, sometimes, to avoid the discomfort caused by privation. Dependence may or may not be accompanied by tolerance. A single person may be dependent on one or more medicaments.

Article 3. Trade in, and the retailing, industrial processing, manufacture, refining, transformation, extraction, analysis, preparation, cultivation, production, import, export, transport, prescription, supply, storage, distribution and sale of the drugs, substances and products to which the present law relates, their derivatives and specialities are activities that shall be strictly limited to the quantities necessary for medical treatment, toxicological and pharmacokinetic analysis, related to medicine and sport, for the preparation and the legal manufacture of medicaments and other products of authorized use and for research. Only legally authorized persons may be involved in any activity related thereto.

Article 4. Establishments that engage in the trade in, and the retailing, industrial processing, manufacture, analysis, refining, transformation, extraction, dilution, packaging, preparation, production, import, export, supply, or storage of solvents or substances that can be used as precursors for the processing of addictive narcotic or psychotropic substances or inhalants shall:

(a) Submit to monitoring, inspection and control by the organ competent for such measures;

(b) Be registered as: pharmaceutical establishments, industries, chemical analysis laboratories, chemical engineering laboratories, chemical and industrial research laboratories, chemical production laboratories, microbiological laboratories or industrial manufacturing plants in which unitary operations and processes are used or establishments for the sale or representation of manufacturers of chemical products for industry, or establishments for the distribution and sale of veterinary products. They shall also have on their staff professionals holding membership of the Federated Society of Chemists and Chemical Engineers, Pharmacists, Doctors or Veterinary Surgeons and Microbiologists, as appropriate and in accordance with the constitutions of those colleges.

Wholesale distributors and manufacturers of the aforementioned substances shall submit samples of each of their products to the Forensic Science Laboratory of the Criminal Investigation Authority, together with an exact description of the method of chemical analysis of such substances. The same obligation applies to national laboratories preparing or supplying such products. The foregoing is without prejudice to their obligation to submit such samples and descriptions to the Department for the Monitoring and Registering of Narcotic Drugs of the Ministry of Health, and to the Official Laboratory for Quality Control, as provided for in article 353 of Law No. 5395 of 30 October 1973, the General Law governing Health, and to other public bodies when other laws so provide.

Article 5. It shall be the duty of the State to provide the necessary economic resources for ensuring the treatment required for the rehabilitation, social resettlement and education of persons affected by the consumption of the drugs to which the present law relates.

Their treatment shall be the responsibility of the Ministry of Health, the Costa Rican Social Security System and the Alcoholism and Drug Dependence Institute and any other legally authorized body or institution.

In all cases, the Alcoholism and Drug Dependence Institute is responsible for the related technical guidance under the authority of the Ministry of Health.

Article 6. The State shall provide drug addicts undergoing rehabilitation treatment with protection and assistance.

Article 7. It shall be the duty of the State, through its competent organs and by all existing means, to encourage international technical and economic cooperation in order to strengthen programmes for research, prevention, suppression and rehabilitation in respect of narcotic and psychotropic drugs and other susbtances to which the present law relates, as well as concluding bilateral and multilateral treaties and agreements to improve such international cooperation.

In order to facilitate criminal investigations and legal proceedings relating to offences defined in the present law, the national authorities, through diplomatic channels, may provide assistance for other States to:

(a) Receive testimony or take statements from persons;

(b) Submit legal documents;

(c) Carry out inspections and seizures;

(d) Examine objects and premises;

(e) Provide information and items of evidence;

(f) Hand over originals or certified copies of documents and records related to the case, including bank, financial, social and commercial documentation;

(g) Identify or detect the product, assets, instruments or other items for purposes of evidence.

Article 8. The Public Prosecutor shall authorize and supervise the process of "controlled delivery", which consists in allowing illicit or suspect shipments of the products or substances to which the present law refers to leave the national territory, pass through it, enter or circulate in it, for the purpose of identifying the persons involved in the commission of the offences envisaged herein; the competent judge shall subsequently be informed thereof.

The authorities of the administering country shall provide, as soon as possible, information concerning the action taken by them in relation to the goods subject to the process of "controlled delivery" and subsequent judicial acts, for the Chief Public Prosecutor.

The national judicial authorities, once proceedings have begun, may authorize the use of "controlled delivery". They may also request foreign authorities who are conducting proceedings in which a "controlled delivery" has been undertaken, to provide all statements relating thereto, which may be used in national proceedings.

Article 9. It shall be the duty of all persons to collaborate in the prevention of the offences and of the illicit consumption of the substances referred to in the present law. The State shall provide the security and guarantees required in each case.

Article 10. All activities aimed at preventing the cultivation, production and posssession of, traffic in, and consumption of drugs and other products to which the present law relates shall be supervised by the National Drugs Council, which is hereby established without prejudice to the functions assigned under the law to the Alcoholism and Drug Dependence Institute, compliance with whose technical criteria shall be compulsory.

Article 11. All the mass communication media in the country shall provide the National Drugs Council with air time for the transmission of programmes aimed at combating the traffic in, and illicit consumption of, addictive drugs.

Such programmes may be devised by the relevant communication medium; however, the production and broadcasting of the programmes themselves shall require the prior authorization of the National Drugs Council, which shall confer on technical matters with the Alcoholism and Drug Dependence Institute. For that purpose, all the mass communication media in the country, both print and electronic, shall every week make available, free of charge, up to half of one per cent of their total space or air time.

Article 12. Donations by natural or juridical persons for the plans and programmes authorized by the National Drugs Council for the prevention of the offences and of the illicit consumption of the substances referred to in the present law shall be deductible from the amount of such persons' gross income for the purposes of calculating income tax.

Article 13. The National Drugs Council, in coordination with other government agencies, shall promote the establishment and operation of civic committees with the aim of combating the production and consumption of, traffic in and possession of addictive drugs.

Article 14. All persons, nationals or foreigners, on entering the country, are required to show and declare the cash they are carrying with them if it exceeds one million colons (C 1,000,000) or its equivalent in foreign currency. They shall use for the purpose the official forms kept by immigration offices for such use. Such declarations shall have the status of sworn statements.

For purposes of evidence, the omission of such a declaration shall be considered as indicative, and false declarations shall constitute an offence to which article 358 of the Criminal Code relates.

Article 15. The Executive is authorized to install a radar centre, located on national territory, as part of the radar network of the Caribbean Basin, the objective of which will be to increase the surveillance of air space and enhance the capacity to suppress the international traffic in narcotic drugs, psychotropic substances and drugs of unauthorized use. The said radar centre shall operate under the exclusive responsibility of the Government of Costa Rica. The Government may, however, assist other governments to achieve these objectives.

The import of the radar equipment, accessories and spare parts shall be exempt from all types of duty and tax.

CHAPTER II

Offences

Article 16. Imprisonment ranging from eight to 20 years shall be imposed on any person who, without legal authority, participates in any way, as perpetrator, co-perpetrator or instigator, in the international traffic in the drugs and products to which the present law relates or in other substances, instruments or equipment intended for their manufacture or dissolution.

Accomplices shall be liable to the aforementioned penalty, reduced or not at the discretion of the judge.

Article 17. Imprisonment ranging from eight to 20 years shall be imposed on any person involved in any form of contract, real or simulated, for transfer of property, investment, pledging, cession, conversion, transfer, storage or concealment of the nature, origin, location, destination or circulation of the profits, objects, assets, securities or goods derived from the criminal acts envisaged in the present law or from the economic benefit of such offences, provided that he knew the origin and attempted by such acts to obscure or conceal the origin of the resources or escape the legal consequences of such acts, irrespective of the place where such illicit acts may have been committed.

Personal encouragement of the offence provided for in this article shall be sanctioned by the penalty indicated for the perpetrator. When the traffic in drugs or the offences related to such activity, including those connected with the acts described in this article, have been committed abroad, such offences may be established by any form of evidence, provided that there is due respect for the guarantees established in national legislation and international conventions accepted by Costa Rica for the protection of the rights of the accused.

Banks in the National Banking System shall submit reports on acts described in this article requested by the Public Prosecutor or judges of the Republic even at the stage of the preliminary investigation.

Judges may also order any documents or evidence in the possession of the banks to be handed over to them whenever necessary in the course of an investigation.

The resolution calling for the foregoing shall duly justify the need for the report or relevance of the piece of evidence.

Article 18. Imprisonment ranging from eight to 20 years shall be imposed on any person who, without legal authority, distributes, deals in, supplies, manufactures, elaborates, refines, transforms, extracts, prepares, cultivates, produces, transports or stores drugs, substances or products to which the present law relates or cultivates the plants from which such substances or products are obtained or such plants as constitute products described in the present law.

The same penalty shall be imposed on any person who fraudulently makes available movable or immovable assets in his possession for carrying out any of the activities described in the preceding paragraph.

The same penalty shall be imposed on any person who, without due authority, possesses such drugs, substances or products for any of the stated purposes and any person who possesses or trades in seeds capable of germination or other natural products for the manufacture of the aforesaid drugs.

The lower limit of the penalty may be reduced by up to one half when it is shown that the sale or supply of such drugs is for the consumer's own use.

The judge shall take into account, with special consideration, when he establishes that the sale or possession is for the consumer's own use or personal consumption, the medical report to be submitted by the Criminal Investigation Authority on the consumer's degree of drug dependence in relation to the quantity of substances, drugs or plants seized.

Imprisonment ranging from 10 to 20 years shall be imposed on any person who directs or finances organizations engaged in committing the acts described in paragraph 1 of this article.

Article 19. Imprisonment ranging from six to 12 years and disqualification from the exercise of public functions for the same period shall be imposed on any official or public employee who, by virtue of his office, is entrusted with judging, investigating or guarding persons connected with the offences described in the present law and who enables persons to evade punishment or to escape, or who conceals, alters, removes or causes to disappear the traces of evidence or instruments of the offence, or who secures the profit or product of that act.

If the aforementioned acts are committed as a result of negligence on the part of the official or employee, the penalty of imprisonment imposed shall be for a period ranging from two to six years together with disqualification for the period mentioned in the previous paragraph.

Article 20. Provided that the act is not liable to a heavier penalty, imprisonment ranging from four to eight years shall be imposed on any person who, by any means whatsoever, encourages or promotes the unauthorized consumption of the narcotic drugs and products referred to in the present law.

Article 21. Imprisonment ranging from four to eight years shall be imposed on any person who, being legally authorized, prescribes unnecessarily the substances referred to in the present law in doses larger than those necessary for therapy, or who issues or supplies them without a medical prescription or in excess of the quantities indicated in the prescription.

In addition to the sanction provided for in the previous paragraph, disqualification for a period ranging from five to 12 years from the exercise of the profession or occupation or from the performance of the act or activity in connection with which the offence was committed shall be imposed.

Article 22. Imprisonment ranging from four to eight years shall be imposed on any person who has in his possession, in unauthorized form, precursors, chemicals, solvents or other substances used in the processing of the drugs referred to in the present law, or of their derivatives, or who carries out unauthorized activities in connection with such drugs, provided that such acts are not more severely penalized in the present or another law.

Article 23. Imprisonment ranging from one to three years shall be imposed on any person who makes available premises, even if free of charge, so that persons can meet there for the purpose of consuming the drugs and products to which the present law relates.

Without prejudice to other penalties provided for in the present or in other laws, there shall be immediate closure of commercial premises, whatever their nature, in which the owners or managers facilitate or promote the commission of offences provided for in the present law. The same shall apply when it is established that the premises are overtly used for the consumption of or traffic in drugs or substances mentioned in the present law, even when the owners or managers do not instigate the activity.

Article 24. A day-fine of 70 to 180 days shall be imposed on any person who, in public places or places to which the public have access consumes or utilizes drugs of unauthorized use. In the case of minors, the authorities shall inform the parents or those responsible for them.

Article 25. Imprisonment ranging from 13 months to two years shall be imposed on distributors and manufacturers of the substances to which article 4 of the present law refers who do not provide the authorities indicated in the aforesaid article with the description and samples required.

Article 26. A fine of up to twice the commercial value of the space not made available shall be imposed on the manager, administrator or director of the public information media who refuses space for transmission of the programmes to which article 11 of the present law refers.

In such cases where the convicted person does not pay the fine within the time specified in the Criminal Code, the judicial authority shall establish the number of days of imprisonment which the convicted person must serve.

The conduct described in this article constitutes a contravention and shall be communicated to the town hall where the headquarters of the communications medium are located. In cases of uncertainty, a town hall in San José shall be informed.

Article 27. The lower and upper limits of the penalties specified in the previous articles shall be increased by one third when the act has been committed:

(a) With the result of harm to a person under 17 years of age or to a person who cannot be held responsible for his actions;

(b) By any person acting as a teacher, educator or spiritual guide to the injured party, or by any person who is a parent or guardian of, or who is responsible for the care and upbringing of the person to whom injury has been done;

(c) In educational, cultural, sports and recreational centres and in places where shows or entertainments for the public are held;

(d) By a group of three or more persons, assembled to commit the offence;

(e) With recourse to violence or use of weapons;

(f) By any person holding public office and the offence is related to that office.

In cases where the person committing the act is an employee in public or private educational institutions, the sentence shall include his disqualification for six to 12 years from teaching at any level of the public or private school system.

Article 28. When initiating proceedings with regard to any of the offences described in the present chapter, the judge who tries the case may order the suspension of such patents, permits, concessions or licences as may have been illegally used to carry out the illicit act. The pronouncement of a sentence of conviction shall result in the patent, permit, concession or licence being cancelled, unless it is proved that its holder, if a natural person, had no part in the illicit act committed. In the case of a legal person, the judge may order the cancellation of the patent, permit, concession or licence or may allow them to be exploited by persons connected with the enterprise who were not involved in the offence.

The restoration to a natural or juridical person of a patent, permit, concession or licence that has been cancelled may not be authorized before 10 years have elapsed from the time of cancellation, even when a third person is used to circumvent this ban.

Such patent, permit, concession or licence shall not be authorized by the relevant agency when there is well-founded suspicion that it will be used by a person who has already lost others through cancellation on the basis of the provisions of the present article.

Article 29. If by reason of the failure of the accused to appear in court, or because the perpetrator of the offence cannot be identified, or by reason of any other circumstance proceedings are not initiated, the judge trying the case shall order the suspension referred to in the previous article, should the improper use mentioned be proved.

CHAPTER III

Security measures

Article 30. The jurisdictional organ which establishes that the accused in the matter possessed the drug of unauthorized use for his personal consumption as a result of his drug dependence, shall give a ruling referring the matter to the Alcoholism and Drug Dependence Institute, which shall determine the remedial measures for the accused, who shall present himself to the jurisdictional organ with the relevant report, for the imposition of a day-fine of 70 to 90 days.

CHAPTER IV

Confiscation, pardon, release from pre-trial detention and reduction of sentence

Article 31. The movable and immovable property, vehicles, instruments, equipment and other facilities used in the commission of the offences provided for in the present law and also such various goods and assets as may derive from these activities, shall be seized or confiscated by the authority examining the case. If their confiscation is ordered, they must be placed at the disposal of the National Drugs Council, which, in a final decision may assign them for official use, donate them to organizations operating in the public interest, or publicly auction them. The proceeds obtained shall be used for the prevention and suppression of drug trafficking, for the rehabilitation of drug addicts and for works in the public interest.

When property recorded in the National Register is seized, the judge in the matter shall immediately order that an entry to that effect be made and shall notify the National Drugs Council of this fact.

When the confiscated property requires maintenance, the judge examining the case may authorize the National Drugs Council to utilize it, until the matter is finally settled. Whenever necessary, the Council shall insure the confiscated goods in order to guarantee possible compensation for deterioration or destruction. In the case of money, the judge shall entrust it to the National Drugs Council for deposit in a bank in the national banking system. The interest accruing therefrom may be used for its own purposes.

When the seizure, attachment or confiscation has to be ordered in respect of assets, instruments or equipment which have been mixed with others acquired from licit sources, the judge shall order that the measure be applied up to the estimated value of the product derived from the offences to which the present law refers.

Article 32. The penalties established in chapter II of the present law may be reduced by up to one half by the judge or court when pronouncing sentence, when the convicted person has furnished the appropriate information making it possible to ascertain the involvement of one or several persons in offences provided for in articles 16, 17, 18, paragraphs 1, 3 and 6, and 19, paragraph 1, of the present law or when they have given sufficient information to allow the seizure or confiscation of considerable quantities of drugs or substances and raw materials used for their manufacture.

Article 33. Persons charged as the principal perpetrators of the offences described in articles 16, 17, 18, paragraphs 1, 3 and 6, and article 19, paragraph 1, of the present law shall not be released from custody pending trial.

Release from custody shall apply to persons charged with the offences described in article 18, paragraphs 1 and 3, if the quantities sold, grown or used were for personal use.

Release from custody pending trial shall also apply to instigators and accomplices and those who may be granted pardon or reduction of their sentence in accordance with the present law.

In cases where release from custody pending trial does not apply, as provided for in the preceding paragraph, the granting of any form of release from custody of the person detained shall be a matter of consultation to be taken up with the judge by the National Criminological Institute.

Article 34. Remission of sentence shall not be granted to anyone who has been convicted of commission of the offences described in the present law.

Article 35. The public prosecutor may make an offer to the perpetrators, co-perpetrators, instigators and accomplices in the offences described in the present

law, by which, in the event of their conviction being sought, he will request that they be granted a judicial pardon or, where appropriate, that they receive a conditional sentence, when they voluntarily provide information which significantly helps to clarify offences described in articles 16, 17, 18, paragraphs 1, 3 and 6, and article 19, paragraph 1, of the present law or to identify the perpetrators of them, beyond the fact of their personal involvement in the offence, or when the perpetrator informs the authorities of plans for the commission of the aforementioned offences in sufficient time to prevent them being committed.

CHAPTER V

The National Drugs Council

Article 36. The National Drugs Council shall be the body with prime responsibility for the areas of activity contemplated in the present law, without prejudice to the functions assigned under the law to the Alcoholism and Drug Dependence Institute. It shall operate as an agency of the Ministry of Justice and shall have legal personality for the performance of its functions.

Article 37. For the performance of its functions, the National Drugs Council shall have a revolving fund consisting of:

(a) The resources annually allocated in the regular and extraordinary budgets of the Republic. The Council is authorized to manage, with responsibility before the Executive, the items that it considers necessary to achieve its purposes;

(b) The resources and budgetary allocations authorized by the present law for the performance of its functions;

(c) Such international donations as may be received;

(d) Any other resources that may be acquired.

Article 38. The following shall be the functions of the National Drugs Council, without prejudice to those established by the law for the Ministry of Health and the National Alcoholism and Drug Dependence Institute:

(a) To establish, for adoption by the Government of the Republic, a national anti-drug plan, based on programmes to be formulated by public and private entities, to promote education, prevention, treatment, rehabilitation of addicts and to reintegrate them in society and suppress the production and use of, and trading in, addictive drugs. In addition, the Council shall propose measures for the effective application of the national anti-drug plan;

(b) To form a commission of technical advisers representing the various areas to be addressed in the drug problem in order to assist with the national anti-drug plan;

(c) To recommend to and collaborate with the various official organizations, in accordance with the previous paragraph, in the campaigns and specific activities that each of them is to carry out;

(d) To coordinate the activities of the State and private agencies involved in education, prevention and scientific research in the matter of addictive drugs;

(e) To supervise police investigatory activities in respect of these drugs;

(f) To administer the specific funds referred to in article 26 of the present law, subject to the provisions of the Law governing the Financial Administration of the Republic;

(f) To authorize resources for duly constituted community organizations dealing with the administration, rehabilitation and education of persons affected by the consumption of the drugs to which the present law relates;

(g) Any other functions as may be determined by law or regulation.

Article 39. The National Drugs Council shall be made up of the following members:

(a) The Minister or Deputy Minister of Justice, who shall preside over it;

(b) The Minister or Deputy Minister of Labour and Social Security;

(c) The Minister or Deputy Minister of Public Health;

(d) The Minister or Deputy Minister of Public Education;

(e) The Minister or Deputy Minister of Public Security;

(f) The Minister or Deputy Minister of the Interior and the Police;

(g) The Director-General of the Alcoholism and Drug Dependence Institute;

(h) The Public Prosecutor.

CHAPTER VI

Joint Anti-drug Intelligence Centre (CICAD)

Article 40. The Joint Anti-drug Intelligence Centre (CICAD) shall be established as an agency of the Ministry of the Interior and the Police.

Article 41. The basic purpose of the Centre shall be to combat the illicit traffic in drugs and related offences and to control the supply of them and drug dependence in all its forms, for which purpose it shall be the focal point for the coordination of all activities conducted to combat such offences.

Article 42. The Centre shall be directed by an administrative board consisting of the following members:

(a) The Minister of the Interior and the Police;

(b) The Minister of Public Security;

(c) The Minister of Justice;

(d) The Director of the Criminal Investigation Authority;

(e) The Director of the Intelligence and Security Directorate;

(f) The represenative of the Public Prosecutor.

Article 43. The Minister of the Interior and the Police shall be President of the Adminstrative Board and its legal representative.

Article 44. The Centre shall be in the charge of a director, who shall be the executive head and shall liaise with each of the members representing the bodies of which it consists.

Article 45. In order to carry out its functions, the Joint Anti-drug Intelligence Centre (CICAD) may open a special bank account and shall present its budget to the Comptroller-General of the Republic for the relevant approval.

Article 46. The Centre shall be financed by the resources allocated as a global transfer in the national budget and by such donations and legacies of any kind, both national and international as may be granted.

Article 47. The Centre shall not be subject to the provisions established in the Law governing Financial Administration of the Republic, nor to the Regulations for Administrative Contracting, except with regard to prohibited matters, nor to the Law governing the Establishement of the Budgetary Authority and its Regulations, nor to the Law governing the Financial Balance of the Public Sector, No. 6955 of 24 February 1984 and its amendments.

Concerning administrative contracting, the Executive shall issue, within a period of not more than 30 days, the basic compulsory regulations for the Centre. The lack of regulations shall not affect their application.

The Centre is authorized to apply a maximum of 10 per cent of its resources to confidential expenditures.

The resources administered by the Joint Anti-drug Intelligence Centre, except those for confidential use, shall be subject to auditing by the Comptroller-General of the Republic.

CHAPTER VII

Final provisions

Article 48. The National Drugs Council may appoint advisory subcommittees from among its own members or from non-members of the Council.

This Council shall, at least, appoint a subcommittee for preventive policies and another for law-enforcement policies.

The Subcommittee on Law-enforcement Policies shall consist of the Director or Deputy Director of:

The Intelligence and National Security Directorate;

The Criminal Investigation Authority;

The National Directorate for Drug Control;

The Directorate for Narcotics Investigation and Intelligence;

The Chief Public Prosecutor.

The Minister and Deputy Minister of the Interior and the Police and Public Security may attend the meetings of this Subcommittee as they deem appropriate. They shall also attend those meetings where directives and global plans of action in the area are defined.

For the purposes of its functions, the Subcommittee may open current bank accounts.

The Subcommittee shall have a legal personality appropriate to the nature of its functions and, to give it the necessary flexibility in combating drug traffic, it shall not be subject either to the provisions of the Law governing Financial Administration of the Republic or to the Regulations for Administrative Contracting, except with regard to prohibitions, or to the Law governing Establishment of Budgetary Authority and its Regulations, or the Law governing the Financial Balance of the Public Sector, No. 6955 of 24 February 1984 and amendments.

It may also allocate up to ten per cent (10%) of its resources for confidential expenditures.

The resources administered by the Subcommittee shall be subject to auditing by the Comptroller-General of the Republic, for which purpose it must present its budget to the Comptroller-General for approval, with the exception of the resources for confidential use, which shall be controlled by the Comptroller-General of the Republic a posteriori.

In matters of administrative contracting, the Executive shall issue basic regulations which shall not limit the flexibility or speed of response required by police authorities.

Article 49. All police authorities who have investigated cases of presumed commission of offences described in the present law shall, before handing over aliens who may be involved in them to the immigration authorities for deportation or expulsion, submit a certificate from the Public Prosecutor stating that no criminal proceedings for deportation or expulsion have been initiated nor any evidence found that might lead to the conviction of the person or persons or which would make continuation of the investigation necessary; for this purpose the police authorities shall submit to the Public Prosecutor the file on the investigation.

Article 50. The Executive shall adopt such budgetary measures as are necessary for the implementation of the present law.

Article 51. The Executive shall enact the regulatory provisions for the present law."

Article 2. The following paragraph (12) shall be added to article 93 of the Criminal Code:

"Article 93.

...

(12) To anyone who has been charged by the Public Prosecutor as an intermediary in the traffic in the substances or drugs regulated by the Law governing Psychotropic Substances, Drugs of Unauthorized Use and Related Activities, No. 7093 and who provides

correct information leading to the discovery of the offence and its perpetrators, beyond the fact of his own participation, and also anyone who has voluntarily informed the authorities of offences prior to their commission and in sufficient time to prevent their commission."

Article 3. Article 23 of the Organic Law of the Ministry of Health, No. 5412 of 8 November 1973, modified by article 1 of Law No. 7035 of 14 April 1986, shall be amended to read as follows:

"Article 23. The financing of the Institute shall be included in the National Budget of the Republic, without prejudice to any other type of income that may be acquired. These funds shall be separately administered in a special current bank account and shall be subject to auditing by the Office of the Comptroller-General of the Republic."

Article 4. Article 2 of Law No. 7035 of 24 April 1986 shall be amended to read as follows:

"Article 2. In order to maintain a permanent preventive campaign against alcoholism and drug-addiction in schools and colleges throughout the country, manufacturers and distributors of tobacco and alcoholic liquors are authorized to deduct from the profits tax the donations made by them to that campaign. For the same purpose, the National Alcoholic Liquor Plant shall transfer one million colons (C 1,000,000) monthly to support the Alcoholism and Drug Dependence Institute, the total contributions by the National Production Council being reduced by the same amount.

Likewise, the Family Allowances Programme shall allocate one million colons (C 1,000,000) monthly to strengthening such preventive programmes, which shall be carried out in close collaboration with the Ministries of Education and Health, and with volunteer groups to be organized in each of the educational centres, comprising teachers, students, family members and others interested in the problem of alcoholism and drug dependence. The Institute may not in any circumstances spend the funds for these programmes on administrative matters or other matters not related to such purposes."

Article 5. Articles 265 and 267 of the Criminal Code, Law No. 4573 of 4 May 1970, articles 372 and 387 of the General Health Law, No. 5935 of 30 October 1983, and the Law Establishing the National Coordinating Commission against the Unauthorized Use of Drugs, No. 5090 of 17 October 1972 and article 51 of Law No. 7111 of 24 November 1988 are hereby repealed.

Article 6. The Costa Rican Petroleum Refinery (RECOPE) shall report monthly to the Ministry of the Interior and the Police its production of jet-fuel and aviation spirit in a report which states the amount sold and the purchaser.

Article 7. The present law shall come into effect from the date of its publication.

PROVISIONAL ARRANGEMENTS

I. Within 30 days following the publication of the present law, the Ministry of Health shall prepare the first schedule to which its article 1 refers.

For communication to the Executive Branch

Legislative Assembly, San José, on the twenty-fifth day of April
of the year one thousand nine hundred and ninety-one
Juan José Trejos Fonseca, President
Ovidio Pacheco Salazar, First Secretary
Victor E. Rojas Hidalgo, Second Secretary

Presidency of the Republic, San José, on the eighth day of May
of the year one thousand nine hundred and ninety-one

For execution and publication

R.A. CALDERON F., Rodolfo Méndez Mata, Minister at the Presidency and
Luis Fishman Z., Minister for the Interior and the Police.

UNITED NATIONS

E/NL.1991/30
25 July 1991

ENGLISH
ORIGINAL: SPANISH

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

CUBA

Communicated by the Government of Cuba

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

Official Gazette dated 23 March 1990

MINISTERIAL DECREE NO. 72

Provisions regulating the control of psychotropic substances

WHEREAS: Article 99 of Law No. 41 of 13 July 1983, 1/ the Public Health Law empowers the Ministry of Public Health to monitor the import, export, preparation, storage, distribution, circulation, sale and use or application of narcotic drugs and psychotropic substances.

WHEREAS: Psychotropic substances, being pharmaceutical specialities, are regulated by the issue of a single medical prescription and, in view of their stimulant and hypnotic effects on the nervous system, depending on their composition, and the health-threatening drug dependence that they induce, it is necessary to refine the established control measures for such substances.

WHEREAS: It is necessary to adopt regulations for the control of psychotropic substances, similar to those adopted for narcotic drugs, along the lines of the "1971 Convention on Psychotropic Substances", to which Cuba acceded on 26 April 1976.

SO THEREFORE: In application of the powers conferred upon me as Minister for Public Health,

I hereby decree

That provisions for the control of psychotropic substances be put into effect.

1/ Note by the Secretariat: E/NL.1985/91.

V.91 27579 1228E

CHAPTER I

GENERAL PROVISIONS

Article 1. These regulations relate to the Schedules in the 1971 Convention on Psychotropic Substances initialled at the United Nations Conference for the Adoption of a Protocol on Psychotropic Substances, held in Vienna from 11 January to 21 February 1971, which are appended hereto and form an integral part of this decree.

Article 2. The Ministry of Public Health and bodies at all levels of the national health system shall cooperate and coordinate action with the Ministry of the Interior for the prevention and control of the illicit use of the substances referred to in the preceding article.

CHAPTER II

IMPORT AND EXPORT

Article 3. The import of substances in Schedule I (hallucinogens) or of any other substance in that Schedule is prohibited, except for the very small quantities intended for scientific use and medical purposes with the express authorization of the Ministry of Public Health.

Article 4. All imports of psychotropic substances must comply with the following requirements:

The substances in Schedules II, III and IV of the Convention on Psychotropic Substances shall require prior authorization for each substance, in the form of an official certificate issued by the Pharmacy Directorate of the Ministry of Public Heath.

Article 5. All imports addressed to a post office box number, a bank or a person different from that indicated on the import authorization shall be prohibited.

The Government of the exporting country shall issue an export certificate and send a copy thereof to the importing country.

Article 6. Important pharmaceutical specialities containing psychotropic substances in Schedules I, II and III intended for private persons shall be seized, confiscated and handed over to the Ministry of Public Health.

Article 7. The export of pharmaceutical specialities containing psychotropic substances in Schedules II, III and IV of the Convention shall require an official certificate issued by the Pharmacy Directorate of the Ministry of Public Health.

Article 8. The carriage by international travellers of small quantities of preparations of any of the psychotropic substances not included in Schedules I and II, in the original or a correctly identifiable pack, for personal use and for treatment purposes during their stay in the country shall be permitted.

If an excessive number of preparations are carried for personal use the relevant authorities shall confiscate them.

CHAPTER III

PREPARATION

Article 9. The pharmacist in charge of the producion laboratory shall enter the controlled raw material received from the distributing warehouse in the official register kept for that purpose, each entry being checked by the Drugs Inspector of the relevant National Health Service section.

Article 10. When using the raw material referred to in the preceding article to prepare pharmaceutical specialities, all laboratories shall request the presence of a Drugs Inspector, who shall verify their use.

Article 11. When the preparation of these pharmaceutical specialities has been completed, the laboratory shall send to the Pharmacy Directorate of the Ministry of Public Health a certificate indicating the quantity of products generated by the preparation process and shall request the presence of a Drugs Inspector to verify the figures and make an entry in the official register. The products must be transferred to the distribution depositories after authorization by the Pharmacy Directorate.

CHAPTER IV

STORAGE AND DISTRIBUTION

Article 12. The National Narcotics and Psychotropic Substances Depository is subordinate to the Pharmacy Directorate of the Ministry of Public Health and shall be responsible for the custody, storage and distribution of raw materials and pharmaceutical specialities containing controlled narcotic drugs and psychotropic substances. The provincial and municipal depositories shall be subordinate to the Pharmacy Departments of the appropriate Sectoral Directorates, with the same functions.

All depositories shall keep a duly authorized register in which all movements of narcotic drugs and psychotropic substances shall be noted.

Article 13. The transfer of controlled psychotropic substances shall require, as an essential, prior authorization by the persons responsible for them.

Article 14. Controlled psychotropic substances shall be kept for distribution at the following centres:

All-day shift pharmacies;

Pharmacies of medical care centres;

Units which need to have psychotropic substances on account of the nature of their work.

CHAPTER V

RECORDS

Article 15. In respect of substances in Schedules II, III and IV, the importing and exporting enterprise and the wholesale distribution enterprises shall keep registers showing the quantity, date, supplier and receiving body of each purchase and delivery.

Article 16. For the substances in Schedule II and the remaining substances under the double prescription regime, the producing enterprises, retail units, the hospitalization and medical care establishments and scientific institutions shall keep registers showing each purchase and delivery and giving particulars as to the date, the supplier, the quantity used, the product in which it is used or the prescribing physician.

Article 17. The registers and models for the control of psychotropic substances shall be prepared by the Pharmacy Directorate of the Ministry of Public Health.

The registers relating to these substances must be kept for at least two years.

CHAPTER VI

RESTRICTIONS ON THE USE OF PSYCHOTROPIC SUBSTANCES

Article 18. The import, export, manufacture and use of the substances in Schedule I, except for those for which the purposes and authorization [arrangements] are set out in article 2 herein, are prohibited.

Article 19. The substances in Schedules II, III and IV may be used only for medical and scientific purposes.

CHAPTER VII

SALE AND CONSUMPTION

Article 20. The psychotropic substances in Schedules III and IV shall be supplied to the public only on the basis of a medical prescription.

Article 21. The substances included in Schedule II [are]:

Amphetamine

Dexamphetamine

Phencyclidine

Fenetylline

Phenmetrazine

Levamphetamine

Levomethamphetamine

Mecloqualone

Methaqualone

Methamphetamine

Methylphenidate

Secobarbital.

Glutethimide and amobarbital in Schedule III and chloral hydrate and any preparation containing any of these substances must be indicated by doctors, complying with the double prescription regime and using the official prescription book for narcotic drugs and psychotropic substances.

Article 22. Prescriptions for substances in Schedule II and those included in the monitoring of the double prescription regime of the official prescription book for narcotic drugs and psychotropic substances shall be valid for 72 hours following the date of issue.

Article 23. If it is necessary to prescribe more than one pack of the substances mentioned above, the prescription must be accompanied by details of the method and the daily dose to be taken.

Article 24. The technical directors of the corresponding units shall be responsible for the control and custody of the substances mentioned in article 21.

Article 25. In the medical care centres, prescriptions for controlled psychotropic substances must be issued using the official prescription book for narcotic drugs and psychotropic substances used in medical care centres and a record of substances entering or leaving the centres must be kept in the official register of narcotic drugs and psychotropic substances.

The stock of such substances or the portion remaining in the custody of the technical officer responsible for providing the service in the absence of the technical director must be checked daily by the latter and handed over against signature to the incoming shift.

CHAPTER VIII

WARNINGS ON PACKS AND IN ADVERTISING

Article 26. The labels and the leaflets or inserts accompanying the packs in which psychotropic substances are offered for sale shall contain instructions for their use and the warnings and indications considered necessary to ensure the safety of the user.

Article 27. Advertising of the psychotropic substances regulated by this decree shall be prohibited.

CHAPTER IX

PSYCHOTROPIC SUBSTANCES CARRIED ON SHIPS AND AIRCRAFT ON INTERNATIONAL ROUTES

Article 28. The regulations of the Pharmacy Directorate of the Ministry of Public Health regarding any necessary quantities of preparations of psychotropic substances in Schedules III and IV, as well as Schedule II, carried on ships and aircraft on international routes, must be complied with. Such preparations shall be under the responsibility and in the custody of the captain of the vessel or aircraft and shall be subject to monitoring by means of the register, as well as to inspections ordered by the Ministry of Public Health.

CHAPTER X

INSPECTIONS

Article 29. Through the Pharmacy Directorate, the Ministry of Public Health shall carry out inspections of the importing and exporting enterprises and other bodies and institutions or establishments that use the substances in question in order to monitor compliance with the provisions of the present decree.

CHAPTER XI

FINAL PROVISIONS

Article 30. Any person who infringes the provisions of the present decree shall incur the liability established under the Penal Code, irrespective of any disciplinary measures in the employment or administrative sector that may be applied.

The Deputy Minister responsible for the Medical and Pharmaceutical Industry shall be responsible for the implementation of the present decree.

The bodies, organs, administrators and officials concerned are notified of this decree and it is published in the Official Gazette of the Republic for general information and for the purpose of its entry into force.

GIVEN in the Ministry of Public Health at Havana on 12 March 1990.

Dr. Julio Teja Pérez
Minister of Public Health